Attorney Docket Number: FSP0163
Client Reference Number: 260158US
Title: NETWORK PERFORMANCE MONITORING
Application Number: 09/995,056

PRE-APPEAL BRIEF REQUEST FOR REVIEW

for

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Client Reference Number: 260158US

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Application Number: 09/995,056

Filing Date: Monday, November 26, 2001

First Named Inventor: Cruickshank III, Robert F.

Group Art Unit: 2151

Review is requested of the final rejection in the above-identified application. No amendments are being filed with this request.

This Request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

I am the attorney or agent of record.

Signature /Charles A. Mirho/ Date: 9/1/2006

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ISSUES/ARGUMENTS FOR WHICH THIS REVIEW IS BEING REQUESTED

Claims 1 and 33 recite, inter alia, analyzing the locations of network elements or metrics associated with the network elements to provide an indication of a likely network problem, and a suggested action for addressing the likely network problem. Foulger, Paragraph 97 teaches a web monitor application that captures IP addresses of visitors to a web site, and tests those addresses. Foulger, Paragraph 98 teaches a test application that performs a traceroute on caputred IP addresses and does a DNS lookup on them. This is something else entirely than analyzing the locations of network elements or metrics associated with the network elements to provide an indication of a likely network problem, and a suggested action for addressing the likely network problem.

No analysis performed to provide an indication of the problem; the system of Foulger merely continues to run regardless; no suggest action is made to address the problem. Data collection continues, and when the connection is restored, the appropriate amount of data is obtained (based on the timestamps of the web addresses, i.e. how long the connection was down).

The following table provides a summary of at least some of the distinctions between claims 1 and 33 and the cited references.

claims 1 and 33	Foulger, Paragraph 97
Analyze locations of network elements or metrics associated with the network elements to provide an indication of a likely network problem, and a suggested action for addressing the likely network problem	web monitor application that captures IP addresses of visitors to a web site; no analysis to provide an indication of the problem or a suggested action to address it
claims 1 and 33	Foulger, Paragraph 98
analyze locations of network elements or	test application that performs a traceroute

metrics associated with the network elements to provide an indication of a likely network problem, and a suggested action for addressing the likely network problem	on captured IP addresses and does a DNS lookup on them; no analysis to provide an indication of the problem or a suggested action to address it

Claims 12 and 44 recite inter alia, weighting metrics differently depending upon perceived relevance of an issue associated with the metric to network performance. Feinberg, Column 5, lines 40-49 is merely a general statement that the number of combinations and permutations for processing or shaping the raw data which comprises the QoS events to obtain QoS parameter values is nearly unlimited. This is insufficient to anticipate the specific processing of weighting different metrics differently, when combining the metrics, dependent upon perceived relevance of an issue associated with the metric to network performance.

The only specific example provided by Feinberg teaches a QoS parameter value produced by summing un-weighted raw data, specifically the total number of lost packets in a one second period. There is no teaching of creating a combined metric by weighting the component metrics differently according to their relevance.

It is well established law that the disclosure of a broad genus does not anticipate every species of that genus. See Corning Glass Works v Sumitomo USA, 868 F.2d 1251, 1262 (Fed. Cir. 1989).

The following table provides a summary of at least some of the distinctions between claims 12 and 44 and Feinberg, Column 5, lines 40-49.

claims 12 and 44	Feinberg, Column 5, lines 40-49
combine first metrics by weighting different metrics differently dependent	merely an unspecific, general statement that the number of combinations and

upon perceived relevance of an issue associated with the metric to network performance	permutations for processing or shaping the raw data which comprises the QoS events to obtain QoS parameter values is nearly unlimited; an example of summing raw data (not metrics), without weights, to produce a metric

Claims 13 and 45 recite, inter alia, performing comparisons of first metrics derived from the raw data with thresholds and to provide second metrics based upon the comparisons. Feinberg, Column 5, lines 40-60 teaches comparing a QoS parameter value with a threshold value, and taking no corrective action if the value is within range. This is something else entirely than performing comparisons of first metrics derived from the raw data with thresholds and providing second metrics based upon the comparisons. Feinberg teaches comparing a parameter with a threshold value but does not teach providing second metrics based upon the comparison.

The following table provides a summary of at least some of the distinctions between claims 13 and 45 and Feinberg, Column 5, lines 40-60.

claims 13 and 45	Feinberg, Column 5, lines 40-60
comparisons of first metrics derived from the raw data with thresholds and to provide second metrics based upon the comparisons	comparing a QoS parameter value with a threshold value, and taking no corrective action if the value is within range

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Claims 14 and 46 recite, inter alia, the second metrics provide indicia of grades of degraded performance of portions of the network as a function of time. Feinberg, Column 5, lines 45-49 teaches producing a QoS parameter by summing values over a period of time. This is something else entirely than providing indicia of grades of degraded performance of portions of the network as a function of time. Feinberg, Column 5, lines 49-64 teaches taking no action if the parameter is out of range. This too is something else entirely than providing indicia of grades of degraded performance of portions of the network as a function of time.

The following table provides a summary of at least some of the distinctions between claims 14 and 46 and Feinberg, Column 5, lines 45-49.

claims 14 and 46.	Feinberg, Column 5, lines 45-49
the second metrics provide indicia of grades of degraded performance of portions of the network as a function of time	teaches producing a QoS parameter by summing values over a period of time
claims 14 and 46	Feinberg, Column 5, lines 49-64
the second metrics provide indicia of grades of degraded performance of portions of the network as a function of time	teaches taking no action if the parameter is out of range

Claims 23 and 55 recite, inter alia, that the network is a DOCSIS network including cable modems and cable modem termination systems, and the first and second data indicate numbers of cable-modem hours at the grades of degradation. The Office Action cites Vogel, Col. 13 lines 9-24 for a teaching of the claimed aspect(s).

Vogel, Col. 13 lines 9-24 teaches that when impairments in the upstream channel from the cable modem to CMTS exist, cable modem systems provide for the ability to change the upstream channel in which a given cable modem uses to transmit.

There is nothing in Vogel about the first and second data indicating a number of cable modem hours. The following table provides a summary of at least some of the distinctions between 23, 55 and Vogel, Col. 13 lines 9-24.

Claims 23, 55	Vogel, Col. 13 lines 9-24
and the first and second data indicate numbers of cable-modem hours at the grades of degradation.	Merely teaches that cable modem systems provide for the ability to change the upstream channel in which a given cable modem uses to transmit. There is nothing in Vogel about the first and second data indicating a number of cable modem hours.